

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 003**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

vs.

FINAL ORDER REGARDING CLIFFORD MORGAN

CLIFFORD MORGAN, et al.

RESPONDENT

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent **Clifford Morgan**, and the members of the Commission having reviewed the Settlement Agreement filed on May 23, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the

Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 26TH day of MAY 2005.



MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage prepaid to the following this the 27 day of May 2005:

Respondent

WILLIAM D. KIRKLAND, ESQ.
KAREN CHRISMAN, ESQ.
MCBRAYER, MCGINNIS, LESLIE & KIRKLAND
P.O. BOX 1100
FRANKFORT, KY 40602 – 1100
Counsel for Clifford Morgan

And by regular mail postage prepaid to Respondents:

DONAVAN ASHER
P.O. BOX 1700
ASHER KY 40803

CARSON SIZEMORE
P.O. BOX 151
BEAR BRANCH KY 41714

JAMES D. BURTON
442 HURRICANE CREEK ROAD
HYDEN, KY 41749

And by messenger mail to:

Hon. Tony Oppegard
General Counsel
Div. Of Mines & Minerals
1025 Capital Center Drive
Frankfort Ky 40601

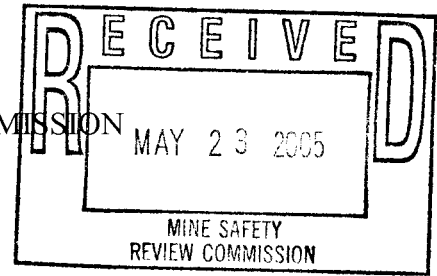
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Hon. Bryon Alan Thompson
General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION



KY. OFFICE OF MINE SAFETY & LICENSING)

Complainant)

v.)

Administrative Action No. 04-MSRC-003

CLIFFORD MORGAN, ET AL.)

Respondent)

SETTLEMENT AGREEMENT BETWEEN OMSL & CLIFFORD MORGAN

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent Clifford Morgan ("Morgan"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him,¹ the cancellation of the trial that is currently scheduled for July 14, 2005, and as a compromise to finally resolve this matter, Morgan - while denying responsibility for any of the violations set forth in the Complaint filed by the Kentucky Department of Mines & Minerals ("KDMM") against him² - agrees to the following:

1. The **PROBATION OF HIS UNDERGROUND MINE FOREMAN'S CERTIFICATE (# A-89-89) FOR A PERIOD OF SIX (6) MONTHS**, effective upon the signing of this Settlement Agreement by both parties.

¹ OMSL and Morgan are filing a joint motion with the Mine Safety Review Commission ("the Commission") to approve the Settlement Agreement and dismiss the action against him.

² KDMM, the predecessor to OMSL, filed the Complaint on February 6, 2004.

2. The **PROBATION OF HIS ELECTRICIAN'S CERTIFICATE (# BE-283-03)**
FOR A PERIOD OF SIX (6) MONTHS, effective upon the signing of this Settlement
Agreement by both parties.

3. During the 6-month probationary period set forth in paragraphs 1 and 2, Morgan shall comply with all state and federal mine safety laws and regulations. The willful violation by Morgan of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground mine foreman's certificate and/or his electrician's certificate for the remainder of the probationary period.³

4. Within 60 days of the effective date of this Settlement Agreement, Morgan must take **FOUR (4) HOURS OF SPECIAL SAFETY TRAINING FROM OMSL** at either its Harlan or Barbourville district office.⁴

5. Within 60 days of the effective date of this Settlement Agreement, Morgan must take **FOUR (4) HOURS OF SPECIAL ELECTRICAL TRAINING FROM DAVID JOHNSON, OMSL'S CHIEF ELECTRICAL INSPECTOR**, at OMSL's Hazard district office.⁵

6. This Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that

³ If the circumstances warranted, OMSL would also retain the right to file a separate action with the Commission seeking other penalties against Morgan for his actions. In either event, Morgan would have the right to a hearing before the Commission on the allegations against him.

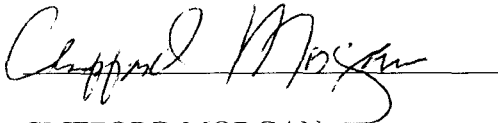
⁴ Said special safety training is in addition to any annual refresher training or other safety training that Morgan is legally required to take

⁵ Said special electrical training is also in addition to any annual electrical re-training or other safety training that Morgan is legally required to take.

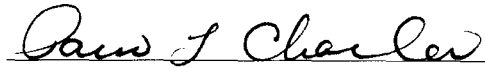
term is defined at 805 KAR 8:010, Section 1 (5); and any future adjudication against Morgan by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

Morgan states that he has carefully read this Settlement Agreement, that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

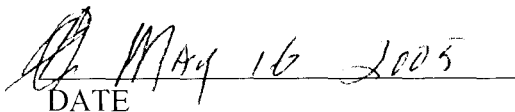
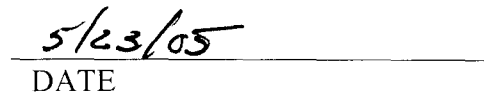
OMSL and Morgan acknowledge and agree that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



CLIFFORD MORGAN
P.O. Box 47
Wendover, Kentucky 41775



PARIS L. CHARLES
Executive Director
Ky. Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602


DATE
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL & Clifford Morgan was mailed this 23RD day of May, 2005, to William D. Kirkland and Karen G. Chrisman, Attorneys-at-Law, McBRAYER, McGINNIS, LESLIE & KIRKLAND, P.O. Box 1100, Frankfort, Kentucky 40602.



TONY OPPEGARD
General Counsel
KY. OFFICE OF MINE SAFETY & LICENSING